



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9758-3]

New York State Prohibition of Discharges of Vessel Sewage; Receipt of Petition and Tentative Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice – receipt of petition and tentative affirmative determination.

SUMMARY: Notice is given that, pursuant to Clean Water Act Section 312(f)(3), the State of New York has determined that the protection and enhancement of the quality of the New York State (NYS or the State) portion of Lake Erie requires greater environmental protection, and has petitioned the United States Environmental Protection Agency, Region 2, for a determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for those waters, so that the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters.

New York State has proposed to establish a “Vessel Waste No Discharge Zone” for the State’s portion of Lake Erie stretching from the Pennsylvania-New York State boundary to include the upper Niagara River to Niagara Falls. The proposed No Discharge Zone encompasses approximately 593 square miles and 84 linear shoreline miles, including the navigable portions of the Upper Niagara River and numerous other tributaries and harbors, and embayments of the Lake, including Barcelona Harbor, Dunkirk Harbor and Buffalo Outer Harbor, and other formally designated habitats and waterways of local, state, and national significance.

DATES: Comments regarding this tentative determination are due by [insert date 30 days from the publication date in the FR].

PETITION: You may view Lake Erie No Discharge Zone Petition by clicking the link below:

<http://www.epa.gov/region02/water/permits.html>

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: chang.moses@epa.gov. Include “Comments on Tentative Affirmative Decision for NYS Lake Erie NDZ” in the subject line of the message.
- Fax: 212-637-3891
- Mail and Hand Delivery / Courier: Moses Chang, U.S. EPA Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866. Deliveries are only accepted during the Regional Office’s normal hours of operation (8 a.m. to 5 p.m., Monday through Friday, excluding federal holidays), and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Moses Chang, (212) 637-3867, e-mail address: chang.moses@epa.gov

SUPPLEMENTARY INFORMATION: Notice is given that the State of New York has petitioned the United States Environmental Protection Agency (EPA), Region 2, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the NYS portion of Lake Erie. Adequate pumpout facilities are defined as one pumpout station for every 300 – 600 boats under the Clean Vessel Act:

Pumpout Station and Dump Station Technical Guidelines (Federal Register, Vol. 59, No. 47, March 10, 1994).

The Great Lakes are the largest group of freshwater lakes on Earth, containing 95% of the fresh surface water in the United States and serving as the largest single reservoir on Earth. The glacial history and the influence of the Lakes themselves create unique conditions that support a wealth of biological diversity, including over 200 globally rare plants and animals and more than 40 species that are found nowhere else in the world.

Lake Erie is the smallest of the Great Lakes. It is also the shallowest, with depths that range from an approximate average of 24 feet in the western basin, to 82 feet in the deeper eastern basin. As the shallowest of the Great Lakes, it warms quickly in the spring and summer, and cools quickly in the fall. This shallowness and the warmer temperatures result in making Lake Erie the most biologically productive of the Great Lakes.

The New York State Department of Environmental Conservation (DEC) developed the New York State petition in collaboration with New York State Department of State (DOS) and the New York State Environmental Facilities Corporation (EFC) to establish a vessel waste No Discharge Zone (NDZ) on the open waters, tributaries, harbors and embayments of New York State's portion of Lake Erie.

A Clean Water Act Section 312(f)(4)(B) NDZ designation for drinking water intake zones might be appropriate for the vast majority of the Lake Erie waters included in this petition. However, to address the few areas that are not Class A (including Barcelona Harbor, Dunkirk Harbor and the

Black Rock Canal), the State is seeking a determination by EPA, under Section 312(f)(3), that adequate facilities exist for the safe and sanitary removal and treatment of sewage from all vessels using this area of the Lake, and has provided information on Lake resources, vessel traffic, and vessel pumpout facilities in support of such a determination. In support of its petition, the state also submitted a Certification of the Need for Greater Protection and Enhancement of Lake Erie waters.

The Lake Erie watershed is home to approximately one-third of the total human population of the Great Lakes basin: 11.6 million people (10 million U.S. and 1.6 million Canadian), including 17 metropolitan areas, each with more than 50,000 residents. The majority, 11 million people, receive their drinking water from the Lake. Of all the Great Lakes, Lake Erie is exposed to the greatest stress from urbanization, industrialization and agriculture. Because the Lake Erie basin supports such a large human population, it surpasses all the other Great Lakes in the amount of effluent received from sewage treatment plants.

There are 18 designated Significant Coastal Fish and Wildlife Habitats in the two counties that comprise New York's Lake Erie shoreline, including Cataraugus Creek, Dunkirk Harbor, Buckhorn Island Wetlands and Grand Island Tributaries. These habitats are essential to the survival of a large portion of lake fish and wildlife populations, and they support populations of species of special concern as well as those having significant commercial, recreational, and educational values.

The New York State shoreline and waters of Lake Erie also host a variety of swimming, boating and other recreational activities. These recreational activities are a source of revenue to the regional economy, bringing people to the shoreline, where they patronize local businesses.

Virtually all of Lake Erie is classified by New York State as Class A waters. This classification means that the best uses of these waters are for drinking, culinary or food processing purposes, recreation and fishing. Class A waters shall be suitable for fish, shellfish, and wildlife propagation and survival, and, when subject to accepted treatment for drinking water supplies, must comply with New York State Department of Health (DOH) drinking water safety standards. Currently, six New York municipal and community water supplies, including Buffalo and Erie County, draw water from Lake Erie, and serve approximately 275,000 people.

In summary, as one of the nation's premier waterbodies, Lake Erie supports several important uses, including drinking water supplies, valuable habitats, commercial and recreational boating and other recreational activities. The Lake serves as an economic engine for the region, heavily used and enjoyed by the citizens of the many lakeshore communities and throughout the watershed. The protection and enhancement of the open waters, tributaries, harbors and embayments of the New York State portion of Lake Erie require greater protection than is afforded by the current federal vessel sewage discharge standards. And, an NDZ designation covering the waters of the Lake represents one component of a comprehensive approach to water quality management. This wider effort includes initiatives to control point and non-point source pollution, including pollution associated with municipal discharges, Combined Sewer Overflows, and storm water runoff.

For EPA to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State portion of Lake Erie, the State must demonstrate that the pumpout-to-vessel ratio does not exceed 1:600. In its

petition, the State described the recreational and commercial vessels that use Lake Erie and the pumpout facilities that are available for their use.

To develop a reasonable estimate of recreational vessel use of the NYS portion of Lake Erie, the State utilized two major sources of information. The first was DOS's Clean Vessel Act Plan (Statewide Plan), released in 1996. Using data from the Statewide Plan, the estimated number of recreational vessels in each of the New York State counties bordering Lake Erie is 2,029. The second information source for recreational boater usage was boater registrations, obtained through the New York State Office of Parks, Recreation and Historic Preservation's 2010 Boating Report (OPRHP Report) for the counties of Erie and Chautauqua (the two New York State counties on Lake Erie). The data in the OPRHP Report yields an estimate of 2,204 vessels with MSDs in the respective counties, which are assumed to operate in Lake Erie.

The State provided sufficient information about 15 pumpout facilities that are publicly available for use by recreational and small commercial vessels on the New York State shore of Lake Erie. These facilities either discharge to a holding tank, to a municipal wastewater treatment plant, or to an on-site septic system. All fifteen (15) were created through funding provided by the Clean Vessel Assistance Program (CVAP), and are thus required to be open to the public. Nine additional marinas are located along Lake Erie in New York State. Four of these do not receive CVAP funding, so specific information is not available. The other five marinas represent locations where CVAP funding could support future pumpout facilities. However, for purposes of this adequacy determination, EPA only considered the 15 CVAP funded facilities. Therefore, the most conservative estimate of the ratio of pumpout facilities to recreational vessels is 15:2,204 or 1:147. Because this exceeds the minimum ratio of 1:600, EPA proposes to determine that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for

recreational vessels are reasonably available for the New York State portion of Lake Erie shoreline.

Lake Erie is also used by large commercial vessels. The commercial vessel population was estimated using data from the National Ballast Information Clearinghouse (NBIC), which records ballast water discharge reports for arriving ships at the two main commercial ports on Lake Erie: Buffalo and Lackawanna. In 2010, ballast manifests showed that 62 vessels arrived in Buffalo, and one arrived in Lackawanna. The majority (58) of these vessels were bulk ships, with two passenger ships and one more listed as “other.” The single arrival in Lackawanna was also a bulk ship. Based on these sources, New York State conservatively estimates that the commercial boat traffic docking in the New York State portion of Lake Erie is approximately one vessel per week. Although there are no fixed commercial vessel pumpout facilities at the Ports of Buffalo or Lackawanna, information gathered from the petition indicated that mobile pumpout services are available for hire, including septic waste haulers or pumpout trucks, which can service the vessels while they are docked in either port.

To supplement the State’s submissions regarding commercial vessel traffic in the NYS section of Lake Erie, DEC published a data call on its website seeking any additional relevant information, and also sent an informal request for information to commercial boating organizations that had commented on previous New York State NDZ petitions. Through that data call or request for information exercise DEC did not obtain any additional information. Therefore, based on the low level of commercial vessel traffic at Lake Erie ports in New York, and the availability of septic hauler pumpout trucks, EPA proposes to determine that adequate pumpout facilities for the safe and sanitary removal and treatment of sewage for commercial vessels are reasonably available for the New York State portion of Lake Erie shoreline.

A list of pumpout facilities, phone numbers, locations, hours of operation, water depth and fees is provided below:

List of Pumpouts in the Lake Erie NDZ Proposed Area						
#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
1	City of Dunkirk – Municipal Dock	Dunkirk Harbor	716-366-9882	April 1 – November 15 6 am – 6 pm	6' – 7'	\$5.00
2	Niagara Frontier Trans. Authority	Buffalo Harbor and Buffalo River	716-855-7230	May 5 – October 15 7:00 am - 10:30 pm	6' – 8'	\$5.00
3	RCR Yachts Skyway Marina	Buffalo Harbor and Buffalo River	716-856-6314	April 1 – November 30 8:30 am - 5:30 pm	12'	\$5.00
4	City of Buffalo – Erie Basin Marina	Buffalo Harbor and Buffalo River	716-851-5389	May 1 – October 15 7:00 am - 7:00 pm	10'	\$6.50
5	Rich Marine Sales, Inc.	Buffalo Harbor and Buffalo River	716-873-4060	May 1 – November 1 9:00 am - 5:00 pm	6'	\$5.00
6	Harbour Place Marine Sales. Inc.	Buffalo Harbor and Buffalo River	716-876-5944	April 15 – October 31 24 Hours	12'	\$5.00

	List of Pumpouts in the Lake Erie NDZ Proposed Area					
#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
7	NYSOPRHP – Beaver Island State Park Transient M	Grand Island	716-278-1775	May 15 – October 15 24 Hours	10'	\$5.00
8	Blue Water Marine	Grand Island	716-773-7884	May 1 – November 1 9:00 am-7:00 pm	5'	\$ 0.00
9	Mid River Marina Inc.	Tonawanda Creek	716-875-7447	April 1 – September 30 9:00 am-6:00 pm	5'	\$5.00
10	Collins Marine Inc.	Tonawanda Creek	716-875-6000	April 1 – November 1 24 Hours	6'	\$5.00
11	The Shores/Placid Harbor Marine – Tonawanda Marine Develop Corp.	Tonawanda Creek	716-625-8235	April 15 – October 15 9:00 am-9:00 pm	12'	\$5.00
12	Niagara River Yacht Club	Tonawanda Creek	716-693-2882	May 1 – November 1 Dusk - Dawn	NA	\$3.00
13	Smith Boys of North Tonawanda – Upgrade	Tonawanda Creek	716-693-3472	April 1– November 24 Hours	8'	\$0.00

	List of Pumpouts in the Lake Erie NDZ Proposed Area					
#	Name	Location	Contact Information	Days and Hours of Operation	Water Depth (feet)	Fee
14	East Pier Marine, Inc.	Tonawanda Creek	716-693-6604	May 1- November 15 9:00 am - 8:00 pm	5'	\$5.00
15	NYSOPRHP- Big Six Mile Creek State Marina	Grand Island	315-483-9111	May 1- November 1 24 Hours	10'	\$5.00

Based on the above, EPA proposes to make an affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are available for the

waters of the New York State portion of Lake Erie. A 30-day period for public comment has been opened on this matter, and EPA invites any comments relevant to its proposed determination. If, after the public comment period ends, EPA makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the New York State areas of Lake Erie, the State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into those waters.

Dated: November 16, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

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